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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,248	09/29/2000	Wilfried A. Maestle	2901/49088	1133
7590	11/30/2004		EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P O BOX 14300 WASHINGTON, DC 20044-4300			KYLE, CHARLES R	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/676,248	MAESTLE, WILFRIED A.
	Examiner	Art Unit
	Charles R Kyle	3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) 1-48 and 79 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 49-78 and 80 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 49 is provisionally rejected under the judicially created doctrine of double patenting over claim 48 of copending Application No. 09/781964. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: Claim 48 recites all limitations recited by Claim 49.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 53 is provisionally rejected under the judicially created doctrine of double patenting over claim 61 of copending Application No. 09/781964. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The Claims recite effectively the same limitations.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 57 is provisionally rejected under the judicially created doctrine of double patenting over claim 55 of copending Application No. 09/781964. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The Claims recite effectively the same limitations.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending

application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 60 is provisionally rejected under the judicially created doctrine of double patenting over claim 57 of copending Application No. 09/781964. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The Claims recite effectively the same limitations.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 61 is provisionally rejected under the judicially created doctrine of double patenting over claim 58 of copending Application No. 09/781964. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The Claims recite effectively the same limitations.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 62 is provisionally rejected under the judicially created doctrine of double patenting over claim 59 of copending Application No. 09/781964. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The Claims recite effectively the same limitations.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 49-78 and 80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Claims begin with the word "Method. The article "A" should precede the Claim language.

The Claims recite "permitting entry of data representative of multiple contracts..." There is no positive recitation that the entry of data is actually done and the recited step is not considered limiting.

The Claims recite that a "loan disbursement time series" is generated. A thorough review of the Specification provides no understanding of what constitutes a "loan disbursement time series." The phrase does not appear in the Specification and a review of all references to "disbursement" and "series" provide no clarification. For purposes of examination, it is assumed that this concept is very similar or identical to the recited "disbursement schedule." The use throughout the Claims of the phrase "time series" is confusing because the concept is either redundant or not clearly explained in the Specification. It is unclear whether such a series is a schedule, table or some other organization of information related to time. Clarification is required.

The Claims also recite the phrase "a capital expenditure time series" which is not clear from the Claim language or Specification.

Additionally, for purposes of examination, the phrase "disbursement schedule" is interpreted to constitute a schedule of disbursements to pay off a loan. The Claim language does not distinguish over this interpretation:

Claims 54, 55, 57 recite steps where an activity is “allowed” with no positive recitation that the step is actually performed.

Claim 63 recites a step where an activity is “permitted” with no positive recitation that the step is actually performed; the recited step is not considered limiting.

With respect to Claim 56, it recite the phrase “cash flow income statement”. This particular statement is unknown to the Examiner, who worked as an accountant for nine years; it does not appear in the prior art of record.

Claim 78 recites that capacity use time series is revisited only to the extent that a user’s intentions cannot be inferred. One of ordinary skill in financial planning arts would not know how the metes and bounds of the claim are delineated, given this phrasing. The Claim also recites “permitting” which does not clearly require change of a startup date.

Examination has been done to the best of the Examiner’s ability given the condition of the Claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49, 51, 53-56, 58, 60-61, 63, 66-69, 73-74, 76-78 and 80 are rejected under 35

U.S.C. 103(a) as being unpatentable over US 5,381,332 *Wood* in view of US 5,878,404 *Stout, Jr. et al.*

With respect to Claim 49, Wood discloses the invention substantially as claimed including in a method for implementing a machine-readable financial simulation computer program (Col. 7, line 44 to Col. 8, line 13), steps of:

installing the program which is contained as computer readable code on a computer usable medium in a computer (Col. 4, lines 26-59),

entering data representative of multiple contracts (Col. 10, lines 51-62) and multiple capital expenditures (Background of the Invention; Col. 5, lines 1-9; references to equipment) categories.

While *Wood* discloses these elements of project management and is concerned with project cost and budgeting, it does not specifically disclose the recited limitations concerning project related loans. *Stout* discloses these elements as follows:

selecting a desired loan financing time horizon (Background of the Invention); generating a disbursement schedule (Col. 4, lines 10-36).

As to the limitation reciting a disbursement schedule independent of changes in capital expenditures and in exchange rates, Official Notice is taken that it is old and well known to

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maintain the substance of a loan as constant. For example, the lender does not care whether a borrower makes additional purchases or uses different currencies; the lender is only concerned that the borrower make timely, adequate payments to pay off a loan. It would have been obvious to one of ordinary skill in the art at the time of the invention to maintain a simple loan package by maintaining independence of payments from these factors because this would help assure that payments were clearly allocable to a particular loan agreement. It would further have been obvious to allow a borrower to determine the percentage of a capital expenditure to be financed because this would allow for the most profitable use of cash reserves.

With respect to Claim 51, *Wood* does not specifically disclose manual redesign of individual repayment amounts. *Stout* discloses this limitation at Fig. 6 and related text. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to allow for adjustable repayment amounts because this would provide flexibility to the borrower. Also, Official Notice is taken that it was old and well known to prohibit paying off a loan early. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* with this provision because this would provide a predictable revenue stream to the lender.

Concerning Claim 53, Official Notice is taken that it is old and well known for a company to build inventories. For example, a company anticipating an increase in sales would build inventories to meet future demand. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to build inventories because this would account for inventory effects in business financial simulation.

Concerning Claim 54, Official Notice is taken that the sharing of cash flow risk with a supplier is old and well known in business. For example, simple late payment of a bill causes the supplier to share cash flow risk with a buyer. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to accommodate such risk sharing because this would improve a buyer's chances of financial survival at worst, and profitability at best.

Concerning Claim 55, *Wood* discloses selection of a time to produce a unit at Fig. 5, "Work Start Date" and "Work End Date."

As to Claim 56, Official Notice is taken that an income statement for a period and a balance sheet prepared at the end of the period would inherently account for output variations including maintenance shutdowns. For example, shutdowns would reduce revenues and so net income. Equity in the balance sheet would reflect reduced net income. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include financial statements reflecting output variations because this would give owners a clear understanding of financial performance over a fiscal period.

With respect to Claims 58 and 60, *Wood* discloses variables related to products at Col. 14, line 8 to Col. 15, line 7.

With respect to Claim 61, *Wood* discloses different product sales contract types at Fig. 6.

With respect to Claim 63, prepayment of loans is old and well known in financial arts.

With respect to Claims 66 and 67, Official Notice is taken that investment and maintenance expense accounts are old and well known in accounting and financial arts. For example, a company wishing to preserve or improve its capital investment must provide funds

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for such activities and establish appropriate, accounts/categories. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include such accounts/categories because this would facilitate maintenance and improvement of assets.

Concerning Claim 68, *Wood* does not specifically disclose various learning curves reflecting "learning curve" experience in startup of a business. Official Notice is taken that it was old and well known to account for such a phenomenon. For example, one skilled in business simulation would recognize that new workers gradually improve job performance with experience. Thus, a worker would become more productive with experience at startup. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to account for such startup curves because this would give a more realistic estimate of startup projection as opposed to merely assuming that a new worker would be 100% productive from the beginning of work.

With respect to Claim 69, it recites updating various financial known measurements based on newly entered data. Such updating is necessary to fairly represent new financial conditions.

With respect to Claims 73 and 77, *Wood* does not specifically disclose financial statements as claimed. Official Notice is taken that such statements are old and well known in accounting. For example, the Examiner has prepared such statements to apprise management of the financial condition of companies. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to produce such statements to provide decision makers with a timely understanding of a company's financial position.

With respect to Claim 74, see the discussion of Claims 68 and 69.

With respect to Claim 76, *Wood* discloses an option to change input time periods at Fig.

5. It would have been obvious to provide flexible date inputs for the claimed fields to allow for modification of the simulation.

With respect to Claim 78, see the discussion of Claims 71 and 74.

With respect to Claim 80, *Wood* discloses GUIs at Figs 1 and 5.

Claims 57, 59, 62, 64 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,381,332 *Wood* in view of US 5,878,404 *Stout, Jr. et al* and further in view of *Dictionary of Finance and Investment Terms*.

With respect to Claim 57, *Wood* discloses the invention substantially as claimed. See the discussion of Claim 49. *Wood* does not specifically disclose a cost-plus contract. *Dictionary* discloses this limitation at page 124. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to consider cost-plus contracts because this would provide suppliers a way to eliminate losses on a contract with no precedent, as disclosed by *Dictionary*.

With respect to Claim 59, *Wood* discloses the invention substantially as claimed. See the discussion of Claim 49. *Wood* does not specifically disclose equity subscription. *Dictionary* discloses this limitation at page 430. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include monthly and month-to-month equity subscriptions to increase funds available to the company.

With respect to Claim 62, *Wood* discloses the invention substantially as claimed. See the discussion of Claim 49. *Wood* does not specifically disclose break-even-testing-of-a-contract

for a product. *Dictionary* discloses this limitation at page 66. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include break even testing to distinguish profitable from unprofitable contracts.

With respect to Claim 64, *Wood* discloses the invention substantially as claimed. See the discussion of Claim 49. *Wood* does not specifically disclose debt service reserve accounts. *Dictionary* discloses this limitation at page 138. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include such coverage, including adjusting step-ups to adequately meet principal and interest payments on debt.

With respect to Claim 71, see the discussion of Claim 62.

Claims 65 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,381,332 *Wood* in view of US 5,878,404 *Stout, Jr. et al* and further in view of *College Accounting, Seventh Edition*.

With respect to Claim 65, *Wood* discloses the invention substantially as claimed. See the discussion of Claim 49. *Wood* does not specifically disclose depreciation of capital assets over a period. *College Accounting* discloses this limitation at pages 624-625. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include such depreciation to fairly represent on financial statements the expense related to the utilization of these assets.

With respect to Claim 70, Official Notice is taken that automatic and manual recording of corporate and property tax data was old and well-known at the time of the invention. For

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example, such taxes payable accounts were used to record liabilities to tax authorities. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to account for tax accounts because this would comply with generally accepted accounting principles.

The use of the phrase "...tax rate time series" is exemplary of the difficulty caused by the time series phrasing. It is unclear what constitutes such a series and the Specification provides no insight.

Claims 72 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,381,332 *Wood* in view of US 5,878,404 *Stout, Jr. et al* and further in view of *Access 97 Bible*.

With respect to Claims 72 and 75, *Wood* discloses the invention substantially as claimed. See the discussion of Claim 49. *Wood* does not specifically validate during input of data. *Access 97 Bible Accounting* discloses this limitation at pages 539-539. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wood* to include such validation to quickly and accurately correct input data.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk
October 29, 2004

Examiner Charles Kyle

